

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

ALLEN YOUNG,

Petitioner,

v.

3:02-cr-78  
(3:07-cv-71)

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION**

This is a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Clerk is **DIRECTED** to serve a copy of the motion and this Memorandum Opinion and accompanying Judgment Order on the United States Attorney. However, for the reasons stated below, the United States Attorney shall not be required to file an answer or other pleading to the motion, and the motion will be **DENIED**.

Petitioner was convicted on drug and firearm charges. On direct appeal, his convictions were affirmed but the case was remanded for resentencing. The court entered an amended judgment and petitioner again appealed. The direct appeal of his resentencing is pending.

Absent extraordinary circumstances, a district court is precluded from entertaining a § 2255 motion while a direct appeal from the same conviction is still pending. *Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998). This case presents no extraordinary circumstances compelling district court review at this time. Accordingly, the motion to vacate, set aside or correct sentence will be **DENIED** and this action **DISMISSED WITHOUT PREJUDICE**.

The court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. A certificate of appealability **SHALL NOT ISSUE**. 28 U.S.C. § 2253. The court will **DENY** the petitioner leave to proceed *in forma pauperis* on appeal. *See* Rule 24 of the Federal Rules of Appellate Procedure.

**AN APPROPRIATE ORDER WILL ENTER.**

s/ James H. Jarvis  
United States District Judge